

(1921) 05 CAL CK 0004
In the Calcutta High Court

Madan Mohan Saha

APPELLANT

Vs

Pryanath Dutta and Others

RESPONDENT

Date of Decision : 19-05-1921

Acts Referred:

Citation : 64 Ind. Cas. 362

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for joint khas possession of an 8-annas share of the land in dispute by ejecting the defendant, who had purchased a non-transferable holding.
2. The landlord representing the other 8-annas share has recognised the defendant as tenant. The defendant says that the plaintiff's agent, one Guno Chandra, recognised him as the tenant after his purchase and that he had authority to do so on behalf of his principal.
3. The Court of first instance found that the agent had authority to recognise the transfer; but on appeal that decision has been set aside.
4. It has been contended before us that the onus of proof had been wrongly thrown upon the defendant to show that the agent had authority, and reference is made to the case of Sudaman Jamalar v. Behari Mahton 10 Ind. Cas. 456 : 15 C.W.N. 953. In that case it was observed that there is no inflexible rule of law that a gomasta has no power to recognise a transfer, that the question must be decided upon the facts of each case. It was further observed that the onus is upon the landlord in the first instance to show what the precise authority of his agent is.
5. In the present case the defendant pleaded, and the Court of first instance found, that the agent Guno Chandra used to manage the affairs of the plaintiff who had to stay at distant places in Government service, and used to come home only on holidays and that the act and conducts of the landlord induced the

tenants to believe that Guno Chandra had authority to let out the lands, The learned Munsif held upon these and other facts that there was scope for the application of estoppel against the plaintiffs. Whether these facts are sufficient to give rise to estoppel or not, they are evidence to be taken into consideration in deciding the question whether Guno Chandra had authority, express or implied, to recognise the defendant No. 1 as the purchaser of the land. It appears that Guno Chandra actually granted a patta to defendant No, 1. The learned Subordinate Judge in coming to the conclusion that there was no authority, either express or implied, from the plaintiff to grant a patta to the defendant No. 1 evidently placed the entire onus of proof upon the defendant and did not take into consideration the facts, which were relied on by the Court of first instance, in coming to the opposite conclusion.

6. We think, therefore, that the case should go back to the lower Appellate Court in order that that Court may take all the facts and circumstances into consideration and dispose of the case according to law.

7. Costs to abide the result.